

APPEAL NO. 021798
FILED SEPTEMBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2002, and on June 26, 2002. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability; that the appellant/cross-respondent (carrier) waived the right to dispute compensability of the claimed injury by not contesting it in accordance with Section 409.021; and that the carrier is not relieved from liability under Section 409.004 because the claimant had good cause for failing to timely file a claim for compensation within one year from the date of injury as required by Section 409.003. The carrier appeals the determinations relating to waiver and timely filing of a claim for compensation. The claimant appeals the compensability and disability determinations. The carrier responded to the claimant's appeal, urging affirmance of the compensability and disability determinations. The appeal file contains no response from the claimant to the carrier's appeal.

DECISION

Affirmed in part; reversed and rendered in part reversed and remanded in part.

GOOD CAUSE FOR DELAY IN FILING A CLAIM FOR COMPENSATION

The hearing officer did not err in determining that the claimant had good cause for failing to timely file a claim for compensation. Section 409.003 provides that for injuries other than occupational diseases, an employee or a person acting on the employee's behalf shall file with the Texas Workers' Compensation Commission (Commission) a claim for compensation for an injury not later than one year after the date on which the injury occurred. Section 409.004 provides, in pertinent part, that failure to file a claim for compensation with the Commission as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless good cause exists for failure to file a claim in a timely manner. Good cause for delay in filing a claim is shown when a claimant exercises ordinary prudence in filing a claim.

The standard of review for determining whether the hearing officer erred in determining the existence of good cause for delayed reporting is whether the hearing officer abused his discretion. The Appeals Panel will reverse a good cause determination only if the hearing officer acted arbitrarily or without basis in the record. Texas Workers' Compensation Commission Appeal No. 961948, decided November 13, 1996. The hearing officer explained that the claimant was credible in her testimony that she did not timely file the claim for compensation because she was under the impression that her employer would do so. The hearing officer did not abuse his

discretion in determining that good cause existed for the claimant's failure to timely file the claim for compensation. Accordingly, the good cause determination is affirmed.

CARRIER WAIVER

The hearing officer did not err in determining that the carrier waived its right to contest compensability by not timely doing so in accordance with Section 409.021. A carrier is required to dispute the compensability of an injury not later than 60 days after receiving written notice of the claimed injury, or it will waive its right to do so. Section 409.021(c). The carrier submitted a Payment of Compensation or Notice of Refused Claim Form (TWCC-21), dated September 21, 2001, and received by the Commission on October 11, 2001. The TWCC-21 reflects that the carrier received written notice of the claimed injury on _____. As the form was filed over a year after the carrier received written notice of the injury, we cannot agree that the hearing officer erred in determining that because the carrier did not timely contest the compensability of the claimed injury it waived its right to do so. Therefore, the waiver determination is affirmed since it was not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

COMPENSABILITY

The hearing officer made the following finding of fact:

2. On _____, the Claimant was not injured, and did not have damage or harm to the physical structure of her body, while furthering the business interest of her Employer.

The hearing officer then concluded that the claimant did not sustain a compensable injury. We find it necessary to reverse the compensability determination because the hearing officer's "no injury" finding is against the great weight of the evidence. If a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law. Texas Workers' Compensation Commission Appeal No. 001214, decided July 20, 2000, Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.). We have interpreted Williamson to mean that a carrier's failure to timely dispute a claimed injury does not create an injury when there is, in fact, no injury. However, if the claimant has established that he or she has a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a TWCC-21 has not been timely and properly filed. See Texas Workers' Compensation Commission Appeal No. 992584, decided January 3, 2000, and Texas Workers' Compensation Commission Appeal No. 981640, decided September 2, 1998. In the present case, there is objective evidence of physical damage or harm to the claimant's spine. Therefore, the hearing officer's finding to the contrary is against the great weight

of the evidence. Accordingly, we reverse the hearing officer's finding of fact that the claimant does not have damage or harm to the physical structure of her body and render a determination that the claimant has an injury as defined in Section 401.011(26). Because the carrier waived its right to contest the compensability of the claimed injury, the claimant's _____, injury is compensable and the carrier is liable for the injury.

DISABILITY

The hearing officer found that since the claimant did not sustain a compensable injury, she could not have disability. Because we reverse the compensability determination, it is necessary to remand the case for the limited purpose of the determining if, as a result of the compensable injury, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage. If the hearing officer determines that the claimant did have disability, he should additionally determine the period(s) of time involved.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Gary L. Kilgore
Appeals Judge